7/3/73

STATE OF SOUTH CAROLINA

EXECUTIVE OFFICE

COLUMBIA

RE: KENNETH E. LOVE, Richland County Magistrate

ORDER

This matter is before me in my judicial capacity under provisions of Section 1-124, 1962 Code of Laws of South Carolina, upon issuance of a rule signed by me on May 1, 1973, amended by order of May 16, 1973, directing that Kenneth E. Love, Richland County Magistrate, appear before me on the 21st day of May, 1973, and show cause, if any he could, why he should not be removed from the office of magistrate for various acts of alleged misconduct in office, or any of of them, set forth in a bill of particulars attached to and made a part of the rule.

Hearing in the matter was had on May 21 - 25, 1973, before Webster E. Myers, Jr., designated by me to conduct the hearing and report to me the proceedings, testimony, and other evidence. Kenneth E. Love, hereinafter referred to as the magistrate, was represented ably by retained counsel.

The term "misconduct in office" has been defined by the South Carolina Supreme Court, State v. Pridmore, 163 S.C. 97, 125, 161 S.E. 340, as:

> "Mismanagement --- Wrong or improper conduct, bad behavior, unlawful behavior or conduct, malfeasance, a case or instance of bad behavior, a misdeed."

The charges contained in the bill of particulars against the magistrate, nineteen in number, may be grouped into six general categories:

1. Failure to afford a prompt hearing to a defendant placed in jail as a result of a bad check arrest warrant issued by the magistrate and executed at his direction.

2. The filing of commitments w th custodial authorities, which had the effect of increasing the jail or prison sentences of defendants already serving sentences, without serving arrest warrants on such defendants or affording them an opportunity to appear before the magistrate to answer such charges.

3. Imposition and collection of costs and fees in bad check cases that were not authorized by statute, and which fees exceeded greatly the fees in such cases authorized by law anywhere in the State.

4. Unauthorized commitment of persons to the South Carolina State Hospital.

5. Attempting to assume jurisdiction in and make final disposition of criminal charges not within the magistrate's jurisdiction.

6. Attempting to persuade one Loretta McMillan, a witness known by the magistrate to be scheduled to testify against him at the hearing scheduled relative to the other charges contained in the bill of particulars, to sign a false statement, i.e. that she had pled guilty to certain bad check charges against her, whereas she had not so pled and had never appeared before the magistrate to answer to the charges in any manner.

Evidence adduced in support of the charges contained in the bill of particulars is as follows:

Category 1

A defendant, Kizer, was arrested on bad check arrest warrants issued by the magistrate, placed in jail, and was kept in custody for a period of twenty days

before being afforded an opportunity to appear before the magistrate to plead to the charges. These facts were not disputed.

In defense of the magistrate, it was shown by his attorneys that such delay in bad check cases was not highly unusual in Richland County, and it was argued that the defendant could have obtained his release at any time by paying the face amounts of the checks involved, plus costs and fees.

While conceding both contentions of the magistrate, South Carolina law provides that any defendant arrested by authority of a magistrate's warrant of arrest be brought before the magistrate as soon as is practicable to be dealthwith according to law. Due process of law is denied when any defendant is kept in jail for twenty days in disregard of this mandate.

Category 2.

It was shown that the magistrate prepared and filed with jail and prison authorities on six occasions "commitments" adding to the sentences of persons already serving sentences, and that in no such case was an arrest warrant served nor was any such defendant given an opportunity to appear before the magistrate to answer such charges.

The defense of the magistrate was that such commitments were, in fact, intended as "detainers" or'holds" and that it was not intended that they be used as "commitments" adding to the sentences of the defendants.

Lt. Carl Wilson, records officer of the Department of Corrections, testified that he had made inquiry of the magistrate by telephone about one of the six "commitments" and that he was told by the magistrate that the defendant's guilt was clear and that there was no need for a trial. In view of this testimony, and the fact that the "six commitments" indicated personal appearance of the defendant before the magistrate on a definite date, a finding guilt, and the imposition of a definite sentence, I find that the "commitments" involved were intended as "commitments" and not "detainers" or "holds".

There is no legal difference between adding a sentence already being served, on the one hand, and committing a defendant to jail initially, on the other. To do either without affording the accused an opportunity for trial is clear denial of due process of law.

Category 3

Evidence showed that in a number of bad check cases involving five defendants, the magistrate settled or compromised the criminal charges involved upon payment to him of the face amounts of the checks involved, plus court costs, and fees ranging up to one hundred dollars, which fees were termed "fines" -- although the evidence was conclusive that none of the defendants appeared before the magistrate for trial.

An attempt was made to show that this practice was customary in bad check cases throughout South Carolina. Testimony was adduced for the magistrate that settlement or compromise of bad check cases has been customary in this State for many years upon payment by the defendant of the face amount of the check, plus mileage and fees. This custom has developed and is at least recognized by statute. Nothing herein contained is intended to hold that the settlement or compromise of any criminal charge is permitted b law. Such testimony did not reflect another instance of fees in excess of ten dollars being charged by any other magistrate, however. In every other case, the testimony was to the effect that fees and mileage were within limits permitted by statute. The maximum fee permitted by statute in bad check cases in any county of the State is ten dollars.

No testimony or other evidence presented on behalf of the magistrate constituted a defense to the allegations against him of charging unauthorized court costs and excessive fees for settling bad checkscases. The exercise of the awesome power of the State is use of the criminal process to force the payment by defendants of court costs and settlement fees in excess of those provided by statute cannot be justified.

Category 4

It was shown and not denied that on two occasions persons were committed to the South Carolina State Hospital by the magistrate, and that he had no legal authority to do so. It was argued for the magistrate, and shown by evidence, that in both cases the subjects were probably in need of hospitalization for treatment of mental or emotional disorders. Neither subject was actually admitted upon such commitments, but both were taken into custody and transported to the hospital by virtue of the orders.

While this defense operates to demonstrate that the magistrate's motive was not ulterior, it cannot excuse the acts as lawful for that reason. If the two persons here involved can be lawfully seized and taken to the State Hospital with the requirements of our laws relating to such matters being blatantly ignored, there are disturbing implications beyond the immediate consideration of this case.

Category 5

On two occasions, the magistrate, with the assent of the prosecuting police officer, disposed of liquor law violations by fines or forfeitures of one hundred dollars each, whereas such cases were not within his jurisdiction. They should have been sent to the general sessions court for dispostion, where greater penalties could have been imposed.

There was testimony to the effect that some other magistrates in Richland County had taken similar action in such cases in the past.

The fact that other magistrates have taken similar action with respect to liquor violations may be taken in mitigation but it is not a valid defense to the charges contained in the bill of particulars. When a magistrate is permitted to dispose of a liquor law violation beyond his jurisdiction, he deprives the circuit solicitor of a chance to prosecute the offender in general sessions court, and, at the same time, frustrates

the will of the Legislature by imposing a lesser sentence than is set out in the law for such violations. Such practice does violence to the entire concept of justice and judicial administration.

Category 6

Testimony of one Loretta McMillan, and other evidence, was to the effect that after the magistrate was served with a copy of the rule in this matter dated May 1, 1973, containing the first eighteen counts of the bill of particulars, the magistrate sent word that he would like to see Loretta McMillan, the evident witness against the magistrate in count sixteen of the May 1st bill of particulars. Loretta McMillan responded by presenting herself at the magistrate's office on the next afternoon. The magistrate asked Loretta McMillan to sign a statement that she had pled guilty to certain bad check charges that were the subject of count sixteen of the bill of May 1st, whereas Loretta McMillan had not so pled, nor had she ever appeared before the magistrate on such charges. Had she signed such statement, such action would have constituted a falsification of the records of the magistrate's office and would have tended to falsely rebut the allegations of count sixteen.

The magistrate denies the allegations of this count; however, based on the testimony of Miss McMillan, and other evidence that strongly supports that testimony, I find as a fact that the events did occur substantially as outlined.

CONCLUSION

Although some of the counts of the bill of particulars are of less weight than others, and certain ones of them, standing alone, are probably not sufficient to warrant removal of the magistrate from office, the evidence viewed in toto shows a pattern of conduct, replete with acts of misconduct, indicating abuses of legal process. In addition the evidence of his attempting to persuade a prospective witness to falsify the official records of his office, in itself is more than sufficient to require

his removal. Such conduct by a judicial officer at any level cannot be either tolerated or condoned. This act along with allegations of the counts contained in categories 2 and 3 which were proven to my satisfaction, constitute grounds of misconduct sufficient in themselves to require removal, without regard to the other counts of the bill of particulars.

THEREFORE, it is adjudged and decreed that Kenneth E. Love be removed from the office of magistrate of Richland County, and it is so ORDERED.

Given under my hand the the Great Seal of the State of South Carolina at Columbia, South Carolina, this 3rd day of July, 1973.

John C. West
Governor of South Carolina

ATTEST:

O. Frank Thornton
Secretary of State